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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,580	12/28/2001	Gary R. Eddy	EDD002USPT01	9162
23403	7590	11/30/2004		
SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205				
			EXAMINER MARSH, STEVEN M	
			ART UNIT 3632	PAPER NUMBER

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/033,580

Applicant(s)

EDDY, GARY R.

Examiner

Steven M Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-16 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

This is the fifth office action for U.S. Application 10/033,580 for an Eaves Trough Support Bracket filed by Gary R. Eddy on December 28, 2001. Claims 2 and 17 have been canceled.

***Response to Arguments***

In view of the appeal brief filed on August 12, 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Applicant's arguments with respect to claims 1, 3-16, and 18-22 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-16, and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In independent claims 1, 18, and 19, Applicant claims that the support bracket is "transversely nestable". The specification and drawings as originally filed show the bracket as having a concavity, but does not disclose how the bracket is transversely nestable.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims that a primary rib formed within the main beam and the strut, longitudinally overlaps the first leg and the second leg. The rib (131) disclosed by Applicant does not appear to overlap the first or second leg. This claim has been examined to the best extent possible.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 3-16, and 18-22 are rejected under 35 U.S.C. 103(a) as being

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unpatentable over Odekirk. Odekirk discloses an aluminum gutter support bracket to be

used with like brackets to support a gutter, with a main beam (20 and 18) having longitudinally spaced distal and proximal ends, laterally spaced first and second edges, and transversely spaced first and second surfaces. There is a connection element (60) extending in a first transverse direction from the distal end of the main beam and transversely spaced from the beam. The connection element has strut (62) with a first transverse end connected to the distal end of the main beam and a second transverse end extending in a first transverse direction from the distal end of the main beam.

There is a tab (64) with a longitudinal end connected to the second transverse end of the strut and a second transverse end extending in a second longitudinal direction from the second transverse end of the strut, with a laterally extending third bend line along a transition line from the strut to the tab. Odekirk does not disclose the distance at which the tab is spaced from the main beam. However, that is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention, depending on the dimensions of the outside wall of the gutter.

There is a hook (70) extending in the first transverse direction and a second longitudinal direction from the proximal end of the main beam, and defining a concavity open in a second transverse direction. The hook includes a transversely extending shaft portion (72) with a first end connected to the proximal end of the main beam and a second end extending in the first transverse direction from the proximal end of the main beam, a hooking portion with a first end connected to the second end of the shaft and a second end extending away from the distal end of the main beam in a second longitudinal direction from the second end of the shaft, and a transversely extending

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extension portion (74) with a first end connected to the second end of the hooking portion and a second end extending in the second transverse direction from the second end of the hooking portion. There is also a longitudinally aligned hole through each of the shaft and extension portions of the hook effective for accommodating partial passage of a mechanical fastener through the holes.

There is a first leg (22 on one side) extending in a second transverse direction from the first edge of the main beam with a proximal longitudinal end substantially transversely aligned with the proximal end of the main beam. There is also a second leg (22 on the other side) extending in a second transverse direction from the second edge of the main beam with a proximal longitudinal end substantially transversely aligned with the proximal end of the main beam. The main beam, first leg, and second leg define a concavity accessible from the first transverse direction, whereby the support bracket is transversely nestable.

There is a first bend line (between 20 and 62) along a transition line from the main beam to the connection element and at least one rib (see fig. 1) formed within the main beam and the connection element, which extends across and substantially perpendicular to the first bend line, improving the structural strength of the bracket along the bend line (the rib appears to latitudinally and longitudinally overlap the first and second leg). There is also a laterally extending second bend line (between 72 and 18) along a transition line from the main beam to the hook and at least one rib (see fig. 1) formed within the main beam and the hook, which extends across and substantially

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perpendicular to the second bend line, improving the structural strength of the bracket along the bend line.

Odekirk also teaches a laterally extending third bend line (between 60 and 62) along a transition line from the strut to the tab. Odekirk does not teach a rib formed at the third bend line, but it would have been obvious to one of ordinary skill in the art at the time of the present invention to have used the teaching of Odekirk in providing ribs at the first and second bend lines of the bracket, and provided a similar rib at the third bend line to increase the structural strength of the bracket.

There are also longitudinally extending fourth and fifth bend lines along the transition lines from the main beam to the first and second legs, respectively. The fourth and fifth bend lines each have a distal longitudinal end proximate the distal end of the main beam and the at least one rib that extends across and is substantially perpendicular to the first bend line, extends beyond the distal longitudinal ends of the fourth and fifth bend lines in the second transverse direction. The transverse heights of the first and second legs are not disclosed, but that is a matter of design preference that would have been obvious to one of ordinary skill in the art at the time of the present invention.

The gutter is installed by the steps of: obtaining a length of eaves trough, obtaining a length of eaves trough support brackets, engaging the connection element of the support bracket, sliding the distal edge of the rear wall of the eaves trough into the concavity defined by the hook, positioning the eaves trough assembly along an eave, and securing the connected eaves trough assembly to the eave.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

  
Steven Marsh

November 27, 2004

  
LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER